

REMARKS

Status of Claims

The office action states that claims 1-71 are pending in the application. However, claim 72 was added by Applicants' January 6, 2004 response. Therefore, Applicants believe that claims 1-72 are pending.

Previously allowed claims 1-71 are now rejected. Claims 1-10, 12, 16, 20, 21, 26, 28, 29, 31, 33, 35, 38, 41, and 43 have been amended. Support for these claim amendments can be found in the specification as originally filed. No new matter has been added. Claims 13, 14, 25, 34, 40, and 58 have been cancelled.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 1-4, 7-9, 11-25 and 43-71 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kaplan, U.S. Patent 5,342,348 in view of Mariant, U.S. Patent 6,187,027. The Examiner states that Kaplan in view of Mariant makes the claimed invention obvious by piecing together phrases and terms in both Kaplan and Mariant. In particular, the Examiner states that Kaplan discloses that the tubular member is configured to promote epithelialization referring to col. 7, lines 52-66. However, Applicant finds no such disclosure. Kaplan at col. 7, lines 52-66 discloses that the delivery matrix is suitable for the delivery of a variety of pharmaceutical agents including growth factor promoters. The delivery matrix of Kaplan is a filament that is designed to release bioactive substances. The delivery matrix is not an open-framework structure designed to secure an occluding member to a wall of a lumen by tissue ingrowth and Kaplan does not disclose a tubular member having an open-framework structure that allows the tubular member to become secured to the wall of a lumen as claimed by Applicants in claims 1-4, 7-9, 11-25 and 43-71.

The Examiner also states that Kaplan discloses in figures 1-6C a device for enlarging body lumens that anticipates a device for occluding a body lumen passageway. Applicants agree with the Examiner that Kaplan discloses a device for enlarging body lumens. Applicants disagree with the Examiner that a device that is designed to enlarge and open a body lumen anticipates or makes obvious a device for occluding a body lumen. If anything, Kaplan's device teaches away from the present invention.

Applicants believe the Examiner is required to support his rejection under §103(a) by explicitly identifying an apparent reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed by Applicants. Applicants respectfully suggest that the Examiner has not met this requirement. Applicants also respectfully suggest that claims 1-4, 7-9, 11-25 and 43-71, as amended, distinguish over Kaplan in view of Mariant.

Claims 5-6, 10, 26-27 and 28-42 are rejected as being unpatentable over Kaplan '348 in view of Mariant '027, and further in view of Phelps, U.S. Patent 5,382,259. For the same reasons claims 1-4, 7-9, 11-25 and 43-71 distinguish over the art of record so too do claims 5-6, 10, 26 and 27 and Applicants again respectfully suggest such claims are allowable.

Conclusion

If the Examiner believes that a teleconference would be of value in expediting the allowance of the pending claims, the undersigned can be reached at the telephone number listed below. Applicants petition for a one-month extension of time to respond to the present office action, the three-month statutory period having expired on April 17, 2007 and the present response being filed on or before May 17, 2007. Accordingly, Applicants authorize the Commissioner to charge the one-month extension fee to Deposit Account No. 50-1901 (Reference No. 687-470/US).

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Respectfully submitted,

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